



Agricultural Marketing Service

7 CFR Parts 915 and 944

[Doc. No. AMS-SC-20-0082; SC20-915-2 FR]

Avocados Grown in South Florida and Imported Avocados; Change in Maturity Requirements

AGENCY: Agricultural Marketing Service, Department of Agriculture (USDA).

ACTION: Final rule.

SUMMARY: This rule changes the maturity requirements currently prescribed under the Florida avocado marketing order. The marketing order regulates the handling of avocados grown in South Florida and is administered locally by the Avocado Administrative Committee (Committee). This change establishes beginning and end dates for the annual maturity shipping schedule. A corresponding change will be made to the avocado import regulation as required under section 8e of the Agricultural Marketing Agreement Act of 1937.

DATES: Effective [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Abigail Campos, Marketing Specialist, or Christian D. Nissen, Regional Director, Southeast Region Branch, Market Development Division, Specialty Crops Program, AMS, USDA; Telephone: (863) 324-3375, Fax: (863) 291-8614, or Email: Abigail.Campos@usda.gov or Christian.Nissen@usda.gov.

Small businesses may request information on complying with this regulation by contacting Richard Lower, Marketing Development Division, Specialty Crops Program, AMS, USDA, 1400 Independence Avenue SW, STOP 0237, Washington, DC 20250-0237; Telephone: (202) 720-2491, or Email: Richard.Lower@usda.gov.

SUPPLEMENTARY INFORMATION: This action, pursuant to 5 U.S.C. 553, amends regulations issued to carry out a marketing order as defined in 7 CFR 900.2(j). This rule is issued under Marketing Agreement No. 121 and Marketing Order No. 915, both as amended (7 CFR part 915), regulating the handling of avocados grown in South Florida. Part 915 (referred to as the “Order”) is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the “Act.” The Committee locally administers the Order and is comprised of growers and handlers of avocados operating within the production area, and a public member.

This rule is also issued under section 8e of the Act (7 U.S.C. 608e-1), which provides that whenever certain specified commodities, including avocados, are regulated under a Federal marketing order, imports of these commodities into the United States are prohibited unless they meet the same or comparable grade, size, quality, or maturity requirements as those in effect for domestically produced commodities.

The Department of Agriculture (USDA) is issuing this rule in conformance with Executive Orders 12866 and 13563. Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. This action falls within a category of regulatory actions that the Office of Management and Budget (OMB) exempted from Executive Order 12866 review.

This rule has been reviewed under Executive Order 13175 – Consultation and Coordination with Indian Tribal Governments, which requires agencies to consider whether their rulemaking actions would have tribal implications. In accordance with Executive Order 13175, the Agricultural Marketing Service (AMS) has not identified any

tribal implications because of this rule.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act (7 U.S.C. 608c(15)(A)), any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing, USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed no later than 20 days after the date of the entry of the ruling (7 U.S.C. 608c(15)(B)).

There are no administrative procedures that must be exhausted prior to any judicial challenge to the provisions of import regulations issued under section 8e of the Act.

This final rule changes the maturity requirements under the Order. This action establishes April 16 to April 15 of the following year as the beginning and end dates for the annual maturity shipping schedule, with an exception for the requirements listed under Guatemalan seedling, which would run from June 9 to June 8 of the following year. This final rule provides clarity regarding the schedule and dates in effect, assists with compliance to help ensure a quality product reaches consumers, and reflects current industry practices. These changes were unanimously recommended by the Committee at its October 14, 2020, meeting.

Section 915.51 of the Order provides, in part, authority to establish maturity requirements under the Order. Section 915.52 of the Order provides authority for the modification, suspension, or termination of established regulations. Section 915.332 of the Order's rules and regulations establishes the maturity requirements for avocados grown in Florida. These requirements are specified in Table I of § 915.332(a) and establish minimum weights and diameters to delineate specific shipping time frames for avocados shipped under the Order. Maturity requirements for avocados imported into the United States are currently in effect under § 944.31.

The maturity regulations are designed to prevent the shipment of immature avocados, and include the annual shipping schedule to help ensure only mature fruit reaches the market. Avocado varieties mature at different times, and varieties can vary considerably in terms of size and weight. Consequently, the schedule establishes shipping dates and maturity requirements by variety. Varieties not specifically listed on the schedule are covered by the requirements for West Indian seedling or Guatemalan seedling. These maturity dates and requirements are established based on a testing procedure developed by USDA.

The shipping schedule in Table I specifies the individual maturity requirements for the numerous avocado varieties shipped each season. As larger fruit within a variety matures earliest, the schedule makes the larger sized fruit available for market first followed by later dates to incrementally release smaller sizes for shipment as they mature. As such, the maturity requirements for a variety are usually divided into A, B, C, and D dates, which are associated with specific weights and sizes reflecting when a particular variety matures.

Avocados may not be handled until the earliest date, the A date, specified for that variety on the shipping schedule so only the largest, most mature fruits are available for market for each variety early in its season. The final date, the D date, for each variety

correlates to the end of its season when all fruits of that variety should be mature and releases all remaining sizes and weights for shipment.

While the maturity schedule includes dates and maturity requirements for individual varieties, the regulations do not specify beginning and end dates for the annual maturity schedule itself. In the past, there was a gap in shipments in April, which created a natural break from one season's schedule to the next, with the first varieties appearing on the maturity schedule in May. This break served as the indicator of where the requirements of one annual schedule ended, and the new annual schedule began.

Such a differentiation between schedules is important as it clarifies which schedule is in place, so handlers know which maturity requirements need to be met. Specifically, this demarcation makes it clear the D dates for one schedule do not stretch to the A dates of the new schedule. Such a delineation between schedules provides a gap between the D dates and the A dates for the next season. This helps to ensure avocados are not shipped early to take advantage of the relaxed maturity requirements of the D-date, which could result in the shipment of immature fruit, and would circumvent the requirement that avocados may not be handled prior to the earliest date specified by the A date for that variety.

However, with the development of late-season varieties, there has been an increase in shipments under the Guatemalan seedling category in March, April, and May. Consequently, there is no longer a break in shipments between annual schedules, which has created an overlap from one annual schedule to the next. With this overlap, questions have arisen regarding the schedule, and when one annual schedule ends and another begins.

In discussing this issue, the Committee supported establishing beginning and end dates for the maturity schedule to address the overlap, and to address questions regarding which maturity schedule and dates were in effect. The Committee believes doing so will

provide clarity regarding the schedule and assist with any compliance issues related to the dates established.

The Committee agreed that using an end date of April 15 for the shipping schedule, with an exception for avocados handled under the Guatemalan seedling category, would be appropriate. This date reflects the break in schedules the industry has used to delineate one schedule from the next, and it remains applicable for all listings on the shipping schedule apart from the Guatemalan seedling.

For most avocados covered under the schedule, the normal harvest cycle, from the A date when the harvest of a particular variety begins to when all fruit of that variety has been picked, is around three months. The last A date listed on the schedule for a specific variety is for the Monday nearest December 12, with a D date of the following Monday nearest January 23. Using these dates, April 15 will provide more than enough time to harvest and ship those varieties listed on the schedule, other than Guatemalan seedling.

While the A date for the “Guatemalan Seedling” appears on the maturity schedule in September, the listing provides the maturity requirements for avocados of the Guatemalan type varieties and seedlings, as well as hybrid varieties and seedlings, and unidentified seedlings not listed elsewhere in Table I. Consequently, the requirements for the Guatemalan seedling cover numerous varieties with shipments extending into March, April, and May for some of the varieties in this category.

Recognizing the shipments under the Guatemalan seedling and related varieties and seedlings do not conform to the same seasonal schedule as the other varieties listed on the maturity schedule, the Committee considered alternative dates for the beginning and end dates for the maturity requirements for those varieties covered under this category. In discussing dates for the Guatemalan seedling, Committee members were concerned about establishing an end date that was beyond the proper maturity timeframe for this fruit, which could allow inferior fruit to enter the market.

Avocados mature on the tree and start the ripening process as they are picked. Avocados can be held on the tree to delay shipments or to lengthen the harvest period. However, if they remain on the tree too long, they will pass their optimal maturity. This can negatively impact the quality of the fruit resulting in fruit that is overmature or overripe.

In past seasons, the industry had been considering June 30 as an end date for the annual requirements for Guatemalan seedling. However, Committee members agreed this date was too late in the season and could result in poor quality fruit reaching the market, as some overripe avocados had appeared at the wholesale level. Committee members believe setting an end date earlier in the month will address the issues related to overmature fruit, improving the quality of avocados entering the market, and providing customers with a better product.

According to information from the Committee, avocados declared as Guatemalan seedling have typically completed shipping before the first week in June. Considering the timing of shipments, and to ensure consumers are receiving a quality product, the Committee recommended establishing an end date for the Guatemalan maturity requirements of June 8.

With most shipments ending before the first week in June, a June 8 end date provides an additional week for handlers to ship any remaining avocados covered by the Guatemalan seedling requirements. Also, by having a clear end date defining where one schedule ends, and the new schedule becomes applicable, handlers can adjust their shipping dates accordingly to meet the requirements.

As a result, the Committee recommended establishing beginning and end dates for the annual maturity shipping schedule of April 16 to April 15 of the following year, with an exception for Guatemalan seedling which extends from June 9 to June 8 of the following year. The Committee believes establishing these dates will provide clarity

regarding the schedule, assist with compliance to help ensure a quality product reaches consumers, and reflect current industry practices and changes in the industry. This change only impacts the maturity requirements under the Order and makes no change to the current grade requirements.

Section 8e of the Act provides that when certain domestically produced commodities, including avocados, are regulated under a Federal marketing order, imports of that commodity must meet the same or comparable grade, size, quality, and maturity requirements. Maturity requirements for avocados imported into the United States are currently in effect under § 944.31. As this rule revises the maturity requirements for Florida avocados by establishing beginning and end dates for the annual maturity shipping schedule, a corresponding change needs to be made to the import regulations.

Imports and importers will also benefit from these changes, which establish beginning and end dates for the maturity requirements. Clarifying the schedule and the requirements that are in place, thus helping ensure customers are receiving a quality product is beneficial for the entire industry, including imports.

The Hass, Fuerte, Zutano, and Edranol varieties of avocados currently are exempt from the maturity regulations and continue to be exempt under this final rule. However, these varieties are not exempt from the import grade regulation, which is not being changed by this action.

Final Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612), the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities. Accordingly, AMS has prepared this final regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such actions in order that small businesses will not be unduly or

disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf.

There are approximately 325 producers of Florida avocados in the production area and 25 handlers subject to regulation under the Order. Small agricultural producers are defined by the Small Business Administration (SBA) as those having annual receipts less than \$1,000,000, and small agricultural service firms are defined as those whose annual receipts are less than \$30,000,000 (13 CFR 121.201).

According to the National Agricultural Statistical Service (NASS), the average grower price paid for Florida avocados during the 2020-21 season was \$21.97 per 55-pound bushel. Utilized production was equivalent to 624,364 55-pound bushels for a total value of over \$13,718,830. Dividing the crop value by the estimated number of producers (325) yields an estimated average receipt per producer of \$42,212, so the average producer would have annual receipts of less than \$1,000,000, which is below the SBA threshold for small agricultural producers. Therefore, Florida avocado producers are considered small businesses.

USDA Market News reported April 2021 terminal market prices for green skinned avocados were about \$36.43 per 24-pound container. Using this price and the total utilization, the total 2020-21 handler crop value is estimated at \$52.1 million. Dividing this figure by the number of handlers (25) yields estimated average annual handler receipts of \$2.08 million, which is below the SBA threshold for small agricultural service firms.

In 2020, the Dominican Republic, Peru, Mexico, and Columbia were the major countries exporting avocado varieties other than Hass to the United States. In 2020, shipments of these types of avocados imported into the United States totaled around 29,630 metric tons. Of that amount, 29,133 metric tons were imported from the

Dominican Republic. Information from USDA's Global Agricultural Trade System database indicates the dollar value of these avocados to be approximately \$41,385,000. There are approximately 20 importers of green skin avocados. Using the total value and the number of importers, the average importer would have annual receipts of less than \$30 million.

Based on these estimates, the majority of Florida avocado producers and handlers, and importers, may be classified as small entities.

This rule changes the maturity requirements under the Order. This action establishes April 16 to April 15 of the following year as the beginning and end dates for the annual maturity shipping schedule, with an exception for Guatemalan seedling which will run from June 9 to June 8 of the following year. This rule provides clarity regarding the maturity schedule and dates in effect, assists with compliance to help ensure a quality product reaches consumers, and reflects current industry practices. This rule revises § 915.332. Authority for this change is provided in §§ 915.51 and 915.52. This rule will also change § 944.31 in the avocado import regulation, as is required by section 8e of the Act.

This action is not expected to increase the costs associated with the Order's requirements or the avocado import regulation. Rather, it is anticipated that this action will have a beneficial impact by providing clarity regarding the maturity schedule and dates in effect, assist with compliance, and help ensure a quality product reaches consumers.

This change will provide clarity as to which schedule is in place, so producers, handlers, and importers know which maturity requirements need to be met. Establishing beginning and end dates for the maturity requirements will clearly identify when the requirements of one annual schedule end, and the new annual schedule begins. Further, having a delineation between schedules assists with compliance by making it clear that

the D dates for one schedule do not stretch to the A date of the new schedule. This will help ensure that immature avocados are not shipped early using the previous season's D date to circumvent the requirement that avocados may not be handled prior to the A date specified for that variety.

For the Guatemalan seedling, establishing the beginning and end dates for the annual maturity requirements should help prevent shipments beyond the quality lifecycle of varieties covered under this category. This change sets a clear date by which shipments under the D date will end, assisting both with compliance and with fruit quality. Absent this change, fruit could be shipped past its proper maturity period, which could provide the consumer with an inferior product.

This change will not create any additional burdens for producers, handlers, or importers. The April 15 end date reflects the break in schedules the industry has used to delineate one schedule from the next, and it remains applicable for all listings on the shipping schedule, apart from the Guatemalan seedling. The April 15 end date provides more than enough time to harvest and ship those varieties listed on the schedule.

For those varieties covered under the Guatemalan seedling, Committee data indicates most shipments are completed before the first week in June. This change provides an additional week beyond June 1 for handlers to ship any remaining avocados covered by the Guatemalan seedling requirements. Also, by establishing a clear end date, handlers can adjust their shipping dates accordingly to meet the new requirements. Establishing an end date of June 8 for maturity requirements for the Guatemalan seedling will provide sufficient time for avocados to ship under this designation, while helping prevent the shipment of overmature fruit.

This final rule provides clarity regarding the maturity schedule and dates in effect, assists with compliance to help ensure a quality product reaches consumers, and reflects current industry practices. The benefits of this rule are expected to be equally available

to all fresh avocado growers, handlers, and importers, regardless of their sizes of operations.

One alternative to this action would be to maintain the current maturity requirements without establishing end dates for the maturity schedule. However, the Committee recognized that shipments have changed over the years and wanted to provide clarity regarding the maturity schedule. Another alternative considered was establishing an end date for the requirements for Guatemalan seedling of June 30. In discussing this date, Committee members expressed concern that this date was past the proper maturity for this fruit and would allow inferior fruit to enter the market. The Committee believes establishing the changes in this rule, rather than the alternatives, would assist with compliance and help ensure a quality product reaches consumers. Therefore, the Committee rejected these alternatives.

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Order's information collection requirements have been previously approved by the OMB and assigned OMB No. 0581-0189, Fruit Crops. No changes in those requirements are necessary as a result of this rule. Should any changes become necessary, they would be submitted to OMB for approval.

This rule does not impose any additional reporting or recordkeeping requirements on either small or large avocado handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies. USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule. Further, the public comments received concerning the proposal did not address the initial regulatory flexibility analysis.

AMS is committed to complying with the E-Government Act, to promote the use of the internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

Committee meetings were widely publicized throughout the avocado industry. All interested persons were invited to attend Committee meetings and participate in Committee deliberations on all issues. Like all Committee meetings, the October 14, 2020, meeting was a public meeting and all entities, both large and small, were able to express views on this issue.

A proposed rule concerning this action was published in the **Federal Register** on August 12, 2021 (86 FR 44286). Copies of the proposed rule were also mailed or sent via e-mail to all Florida avocado handlers. The proposal was made available through the internet by USDA and the Office of the Federal Register. A 60-day comment period ending October 12, 2021, was provided for interested persons to respond to the proposal.

During the comment period, three comments were received in response to the proposal. Of the comments received, one comment was in support of the change and two were opposed.

The one comment in support agreed with the proposed changes and stated their support for the domestic industry. In addition, the commentor added the changes would ensure products are ripe and safe for consumers.

The two comments received in opposition to the change were from industry representatives from the Dominican Republic. Both commentors stated the change would have a negative impact on avocados imported from the Dominican Republic by shortening the calendar and limiting imports. Based on a review of the comments submitted and available information, USDA does not believe this will shorten the calendar year nor have a negative impact on imported shipments based on the reasons discussed below.

The end dates established are consistent with current industry practices and provide ample time for varieties to ship prior to the end dates for the schedule. As previously mentioned, most avocados subject to the maturity schedule are harvested within three months of the A date. The last A date listed on the schedule for a specific variety is for the Monday nearest December 12, with a D date of the following Monday nearest January 23. The end date of April 15 falls four months after the final listed A date and provides handlers sufficient time to harvest and ship varieties listed on the schedule.

Regarding the end date for the Guatemalan seedling, the industry had been considering June 30 as an end date for the annual requirements for Guatemalan seedling. However, Committee members agreed this date was too late in the season and had resulted in overmature, poor quality fruit reaching the market. Setting an end date earlier in the month helps address the issues related to overmature fruit, improving the quality of avocados entering the market, and benefiting growers, handlers, and importers by ensuring consumers receive a quality piece of fruit.

Further, the end date of June 8 is not a significant change from the June 30 date the industry had previously considered. Based on information available, most shipments of Guatemalan seedlings end before the first week in June, and the end date of June 8 still provides an additional week for handlers to ship any remaining avocados. While avocados can be held on the tree for a period after they have reached maturity, varieties covered under the Guatemalan seedling are mature and available for harvest and shipment before the established end date. Handlers and importers can adjust their harvesting and shipping dates to reflect the end dates for the schedule.

Consequently, shipments should not be negatively impacted by establishing end dates for the schedule, nor does the calendar year shorten as a result of this rule. The end

dates will also help prevent the shipment of overmature avocados that have been held on the tree too long.

One comment also stated the change would affect the export of more than 150 containers per year causing an economic loss of more than \$7 million per season. Based on the other information contained in the comment, the statements about the volume and monetary impact stem from concerns regarding how the variety commonly referred to in the Dominican Republic as Beneke will be handled under this change. Importers have been declaring the Beneke variety as West Indian seedling, Hardee, Berni, Beni, and other names, as well as Guatemalan seedling during the importation process. This variety usually ships during the period of overlap in the schedules and can have shipments into July.

The commentor is concerned the change to the maturity schedule would directly affect the imports of this variety as many importers have been declaring the Beneke as Guatemalan seedling at the time of inspection. The commentor believes this change would negatively impact the importation of this variety by reducing its shipment timeframe to that specified for the Guatemalan seedling.

However, in the comment, the Beneke is described as a variety which changes color from green to dark purple. Sections 915.332 of the Order and 944.31 of the Avocado import maturity regulation, provide an exemption from the maturity regulation for varieties which normally change color to any shade of red or purple when mature, except for the Linda variety. Consequently, varieties that break in color, such as Beneke, are exempt from the maturity schedule. As such, this change will not impact the Beneke variety.

The commentor also suggests that Beneke be adopted as the official name for this variety and asked that procedures be updated to assist with the importation of this variety. USDA is familiar with the Beneke variety and has been working on ways to facilitate its

entry into the United States. USDA has requested a United Nations Standard Products and Services Code for the Beneke variety. Once obtained, the codes can be used when presenting this variety for entry into the United States. The importer should also identify the variety as Beneke when submitting the request for inspection. These steps should facilitate the importation of this variety and prevent unnecessary issues and delays during the inspection process.

Accordingly, for the reasons discussed above, no changes will be made to the rule as proposed based on the comments received.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: <https://www.ams.usda.gov/rules-regulations/moa/small-businesses>. Any questions about the compliance guide should be sent to Richard Lower at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

In accordance with section 8e of the Act, the United States Trade Representative has concurred with the issuance of this rule.

After consideration of all relevant material presented, including the information and recommendation submitted by the Committee and other available information, it is hereby found that this rule will tend to effectuate the declared policy of the Act.

List of Subjects

7 CFR Part 915

Avocados, Marketing agreements, Reporting and recordkeeping requirements.

7 CFR Part 944

Avocados, Food grades and standards, Grapefruit, Grapes, Imports, Kiwifruit, Limes, Olives, Oranges, Plums, Prunes.

For the reasons set forth in the preamble, the Agricultural Marketing Service amends 7 CFR parts 915 and 944 as follows:

PART 915—AVOCADOS GROWN IN SOUTH FLORIDA

1. The authority citation for part 915 continues to read as follows:

Authority: 7 U.S.C. 601-674.

2. Section 915.332 is amended by adding paragraph (a)(4) to read as follows:

§ 915.332 Florida avocado maturity regulation.

(a) * * *

(4) The requirements listed in table I of this section are in effect annually from April 16 through April 15 of the following year, with an exception for the requirements for Guatemalan seedling which are in effect annually from June 9 to June 8 of the following year.

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PART 944—FRUITS; IMPORT REGULATIONS

3. The authority citation for part 944 continues to read as follows:

Authority: 7 U.S.C. 601-674.

4. Section 944.31 is amended by adding paragraph (a)(4) to read as follows:

§ 944.31 Avocado import maturity regulation.

(a) * * *

(4) The requirements listed in table I of this section are in effect annually from April 16 through April 15 of the following year, with an exception for the requirements for Guatemalan seedling which are in effect annually from June 9 to June 8 of the following year.

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Erin Morris,

Associate Administrator,

Agricultural Marketing Service.

